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SOME EFFECTS OF NEUTRALIZATION.

A neutral state may at any time lay aside its neutrality and engage in war. This is recognized, though with a somewhat mediæval flavor, by Macchiavelli in his counsel to the ideal prince, where he advises the latter never to remain neutral in a war between his neighbors, but to join with one side or the other, since by his aid that side would gain the victory and he could share in the spoil.

However unlikely it may be that such motives would bear weight to-day, it is nevertheless true that the right to make war at will exists in every sovereign state unless, by reason of international agreement, it is placed altogether outside of the realm of war and devoted to perpetual peace. The duties of simple, or self-imposed neutrality are now clearly recognized and quite generally observed. The neutral state must maintain exclusive jurisdiction and sovereignty over its land and territorial waters, and is bound as well to prevent within its borders all acts inconsistent with complete impartiality toward belligerents. It must, moreover, regulate the use of its harbors and coaling stations according to the recognized provisions of international law; it is bound to prevent the enlistment within its borders of troops destined for foreign service, and, finally, it is compelled to acquiesce in the penalties incurred by its subjects when engaged in the carriage of contraband goods, breach of blockade, or resistance to the belligerent rights of stoppage, visit and search.

In addition, however, to the obligations of impartiality common to all neutral states alike in time of war, states which are *neutralized* incur other and further responsibilities, arising from the permanent nature of their position. None the less fully sovereign and independent, they owe a duty to themselves and to their guarantors not only to abstain from actual war, but also from acts tending even to compromise their peaceful relations with all the world. Permanent neutrality is not easy, either in its award or in its subsequent observance; in essence it is a perpetual reconciliation between the

absolute rights of independent, sovereign communities and the duties of complete impartiality.

Among the many questions arising from the interpretation of permanent neutrality the most important have always been concerned with fortifications, the rights of a neutralized state to form alliances in peace and war, the maintenance of permanent neutrality, the possession of colonies, and the formation of tariff unions. These have been chosen for discussion here, not alone because of the conflicts of opinion to which they have given rise in the past, but chiefly because of their undoubted influence upon the application of permanent neutrality in the future. That all these acts are possible, in so far as they do not interfere with the continued security and advantage of the neutralized state, is not only true, but also is of the utmost importance in any estimate of the value of neutralization in furthering the world's peace. It is hoped to prove here that permanent neutrality is not restriction but liberty, and that under its provisions states are enabled, without loss of honor and with even greater freedom, to work out amid the movements of surrounding nations the development of their national aims and institutions.

FORTIFICATIONS.

A merely neutral state may, in the exercise of its sovereign rights, defend its territory by every means in its power, and erect whatever forts are necessary or the resources of the state will allow. On the other hand, and in the interests of peace, neutralization has always allowed, and not infrequently compelled, the destruction of fortifications, and with them the burdens of militarism which weigh so heavily upon small and unassisted states. Article 3 of the Treaty of 1867 provides that "Luxembourg being neutralized, the maintenance of its fortresses has been left without an object," and they were accordingly demolished. The Treaty of Vienna declared that Cracow should remain unfortified, and that "no military establishment should afterwards be established" which might menace its neutrality. A protocol of the 17th of April, 1831, signed by Great Britain, Austria, Prussia and Russia, declared that "The new situation in which Belgium would be placed, with her neutrality acknowl-

edged and guaranteed, ought to change the system of military defense adopted for the Kingdom of the Netherlands." The forts then in question were too numerous for the Belgians to maintain unaided; consequently the Powers, after deciding that "the unanimously admitted inviolability of Belgian territory offered a security which did not previously exist," united in advising that they should be razed. This was done by a treaty signed at London, on the 14th of December, 1831, which provided that "the fortifications of Ath, Mons, Menin, Philippeville and Mariembourg shall be demolished," but added that the King of the Belgians should maintain the others in good repair. Most of these also, however, have since been razed.

This demolition of fortresses, following the application of permanent neutrality, operates to transfer the main burden of defense from the resources of the state itself to those of its guarantors, and has, in fact, so greatly lessened the military burdens of small and unprotected states that it has been generally permitted, wherever possible and wise. There is noticeable, therefore, a curious divergence in the effects of neutralization upon existing fortifications. Switzerland is encouraged in maintaining her fortresses. Belgium, having lost some, has retained others; but Luxembourg has been forbidden all fortifications whatsoever. The reason lies in the territorial and geographical position of the different countries. Switzerland, by reason of her naturally strong position, can with the aid of fortifications make actual invasion by an enemy's forces well-nigh impossible. With Belgium the reverse is true; and were the City of Luxembourg to be made a fortress, strong as it is, it would by no means insure the inviolability of the state. The very presence of fortresses there or in Belgium, by increasing the strategic importance of the territory fortified, might easily bring about the destruction of the neutrality they were designed to protect, and by holding out advantages to be gained from their capture afford so much the more inducement toward their attack.

Although no definite rule, therefore, can be laid down with regard to the fortifications of a neutralized state, the provisions of past treaties may be readily referred to, and a future course determined in view of the special circumstances of each case. Where no pro-

vision is made, the right to construct and maintain fortresses remains, and in some cases becomes a necessity, as, for example, in the protection of neutral harbors. Only where they tend to become a danger to neutrality, or involve burdens of expense too heavy for a small state to bear, should they be destroyed, and the burden of defense laid upon the guarantors.

There is yet a final question regarding fortresses built and maintained upon the borders of a neutralized state. By some writers these are held to menace neutrality, and Arendt, the chief among them, quotes an article from the Treaty of Vienna forbidding Austria to erect any military establishment at Podgorce on the frontier of Cracow. He is supported by this single instance only; in no other treaty of permanent neutrality is there any provision against the establishment of fortresses bordering upon the territory of a neutralized state. Such fortresses might indeed prove a means of defense rather than of danger, for, as a practical point, Germany might be far less apt to advance into French territory by way of Belgium if the border were strewn with French fortresses than if it were undefended, while at the same time immediate assistance might be drawn from these strongholds in case of a threatened attack upon the neutral territory.

ALLIANCES.

The right of entering into alliances is permitted or denied to a neutralized state in view of the effect such an alliance would have upon the guarantors who have assumed the burdens of maintaining perpetual peace. The subject has long presented and still affords questions which are among the most delicate and dangerous of all those connected with permanent neutrality.

Treaties of alliance may be roughly divided into those for military, political, and commercial purposes, of which the last, being by far the most numerous and important, will be treated under the head of Tariff Unions. Those for military purposes may be for either offensive or defensive war. Treaties undertaken with the purpose of waging offensive war are never permitted, of course, to a neutralized state, and, if entered into, furnish, no doubt, occasion for interference on the part of its guarantors. Treaties for defensive alliance

only, framed by a neutralized state for the purpose of protecting its own neutrality under threatened violation, have given rise to two opinions. On the one hand, such treaties have been held wholly inconsistent with permanent neutrality, while on the other they have been defended wherever, in their operation, the obligations of neutrality are neither infringed nor threatened. M. Kleen, in his recent work upon *Neutrality*, holds that a neutral state "is deprived of the right of contracting alliances defensive as well as offensive, for even a defensive alliance may lead to a declaration of war to defend a right attacked." This statement, if accepted literally, would apply with greater force to every state the neutrality of which is made perpetual. Dr. Schweitzer, on the other hand, for reasons immediately affecting his own state of Switzerland, holds that in her case this form of alliance is permitted. He explains that the neutrality of Switzerland was merely affirmed at the Congress of Vienna and that, in consequence, her right to contract alliances remained unaffected by the provisions of that treaty. This contention, however, appears little more than an uncertain basis for a doctrine which has more reasonable grounds for support. The right to form alliances is inherent in every independent, sovereign state, not to be restricted so long as its exercise does not prejudice the performance of all the duties of neutrality, and never to be denied without danger of converting the neutralized state into a protected one. As Rivier says of a neutralized state, "it may not conclude a treaty of alliance simply for purposes of offense; but there is nothing to contradict the opinion that a conditionally offensive alliance, undertaken in view of violated neutrality or under an immediate menace of violation by a third party, may not be arranged." The attack must of course be one directed against the neutralized state itself, for, as Rivier says later, "a neutralized state may conclude defensive alliances, but only those where the ally is bound to defend it and not where it is bound to defend its ally."

The question is still unsettled. Alliances are only too apt to result in obligations from which neutralized states should remain free. They may be invoked in cases of absolute necessity, as for immediate self-protection, but should be made to continue for as short a time as

possible, and be terminated at the earliest opportunity. How urgent the necessity must become in order to justify an alliance remains a matter of conjecture. That it must arise from some overt act, and not from some mere unexecuted project, such as that proposed by Napoleon III for the partition of Belgium in 1866, is now well understood.

Treaties of political union stand upon a slightly different footing. A common form of these, and one not denied to neutralized states, is that effected through the personality of a common sovereign. This is the relationship existing between Belgium and the Congo to-day. It has existed, moreover, not only between Neufchâtel and Prussia, but also between Holland and Luxembourg, until 1890, when, on the death of the King Grand Duke and the accession of Queen Wilhemina, the sovereignty over the latter was conferred upon Duke Adolph of Nassau. This form of union may without objection be permitted in cases not involving any direct control from without over the internal administration or sovereignty of the neutralized state.

THE MAINTENANCE OF NEUTRALIZATION.

As is the case with common contracts, treaties are created to meet the existing interests of the contracting parties. Where these parties are independent sovereign states, acknowledging no superior, and no bond other than a common will, the latter often depend not only for their formation, but also for their subsequent continuance upon a survival of the identical interests which created them. Treaties conferring permanent neutrality, however, are not of this nature. As in a contract between individuals where there comes into being, the moment the agreement is made, a something other than self-interest, termed obligation, the *vinculum juris*, which survives the interest which created it, so an agreement between many nations results in a mutual obligation upon all of them, not to be avoided by a change in the intention of a single party. Had the treaties of neutralization now existing been subject to revision or rejection at the bare will of one of the signatory Powers, no present instance of permanent neutrality would probably have survived. It is this mutual guarantee between nations which alone has led to permanency, and which

distinguishes neutralization from those agreements between individual nations only which are dissolved at the will of either of the contracting states.

When Bismarck addressed his note to the Powers stating that the German Government needed no longer to take into consideration the neutrality of Luxembourg, M. Servais, Minister of State for Luxembourg, replied that the terms of the Treaty of 1867 included Germany among the contracting parties, and that the treaty would not be broken if one of the Powers alone should decide no longer to abide by its terms. Austria and England confirmed the minister's reply and held that the guarantee was a common pledge, not to be broken by the action of any one Power. Bluntschli holds that a neutral state which is powerless to defend its own neutrality loses by that fact its character as a neutral. This is much too severe, especially as regards states which, by reason of being placed in permanent neutrality, may have consented to a reduction of their fortresses or other means of defense. A state that is unable to protect its neutrality can not in justice, simply because its military strength happens to be inferior to that of its neighbors, be deemed to have lost that neutral character.

But however just in theory, in the case of international agreements, may be a strict obedience to the terms of a treaty, questions have not infrequently arisen with regard to breaches of neutrality and the means then available for its proper enforcement. If the fault is committed by the neutralized state, as, for example, by its becoming a centre of disturbance to its neighbors or by failing to maintain internal order, the guarantors are freed from their obligations and may take steps to enforce a return to healthful conditions. In 1847 Guizot forwarded instructions to the French Ambassador at Berne directing him that

if Switzerland places herself outside of the conditions which she has accepted, and becomes to her neighbors a centre of disturbance and revolutionary propaganda which is likely to disturb their repose, they have the right to consider themselves freed from their engagements.

This very situation arose in 1887, when a certain group of socialists and anarchists commenced publishing writings and giving demon-

strations within Swiss territory which were held by Germany to compromise the security of the empire. On complaint received through the German Legation, the Swiss Government undertook the investigation of these disturbances; but the proceedings were suddenly terminated in mid-career by the unexpected announcement by Captain Fischer, Chief of Police in Zurich, that several ringleaders in the disturbance were none other than secret agents of the Berlin police. Fortunately, diplomacy intervened, and the direct issue was avoided by the creation of a special bureau of police to oversee resident foreigners and prevent any similar occurrences. Had Switzerland been unable, through her own exertions, to maintain internal order in this crisis, the result might have been different, and intervention on the part of the guarantors become a necessity.

Of all forms of intervention, diplomatic pressure would be the first to be applied, since in the history of neutralization actual force has never been employed as a means of coercing a recalcitrant state. An instance of courteous yet powerful intervention is afforded by the action of the Powers with regard to the reigning dynasty in Luxembourg. Believing it to be to their interest that the sovereign of the Grand Duchy should be chosen from the House of Nassau, a special provision was inserted in the treaty of neutralization of 1867 to the effect that the sovereignty of the Duke of Leuchtenberg, then a very possible claimant, would not be recognized by them should he be offered and accept the crown.

If a guarantor should commit an international fault, is the treaty broken or does it continue binding as before? Here again it would seem that the treaty, though broken by one of its parties, will not be avoided. The party might even designedly break one of the provisions, and then by reason of the breach maintain that the treaty was no longer in force. The question arose in 1857 when Switzerland, in the interests of the internal sovereignty of the province of Neuchâtel, resisted the intervention of the King of Prussia in its private affairs.

Neuchâtel had formerly been a member of the German Confederation, but had been added to Switzerland and partook of the latter's neutrality. The relation between Prussia and Neuchâtel was one

of personal union only, by reason of their having a common sovereign in the person of the King of Prussia, but although this ruler was also Prince of Neuchâtel, his attempt to restore the allegiance of the province by means of Prussian soldiers was rightly considered as violating the provisions of Swiss neutrality. For a short time the situation was greatly strained, but Switzerland was supported by Austria and England, and, although the object of the King was merely to enforce allegiance and restore internal order, his action was held inconsistent with the agreement of Prussia to respect the absolute neutrality of Swiss territory, and the effort was abandoned. It is now settled that any agreement to respect and to cause others to respect the position of a neutralized state is binding upon all parties to it, both jointly and in their separate capacity, and imposes upon each one of them not only a respect for the treaty itself, but also the right to enforce the same respect from others.

COLONIES.

Permanent neutrality was applied first to entire states, and the earlier questions arising from its application concerned the position of independent sovereign communities alone. With the century, however, the benefits of permanent neutrality have been extended to cover provinces as well, and colonies, neutralized portions of an unneutralized whole, until over these have arisen possibilities for friendlier world-relationships undreamed of by early statesmen. Related as they are to commercial and industrial expansion, the exclusive possession of colonies is to-day one of the most probable if not indeed the most certain cause of the increase in preparedness for war and the burdens of armed peace. The past has shown that these too may be neutralized, and that as entire states have been placed under international protection in the past, so provinces and colonies in the future may be removed forever as the greatest obstacles in the way of friendly cooperation between nations.

Permanent neutrality may be applied to colonial possessions quite irrespective of the international status of the mother country. Both may be neutralized together; or the neutrality may be extended to the state alone, or only to its subsequently acquired possessions. This

naturally leads to different results in the relations between the colonies and the mother country. In the first and simplest case the colonies would continue their relations with the mother state almost unaffected by the treaty. Their dependent condition would of necessity throw a further obligation upon the guarantors, and, if for that reason only, they would probably receive special treatment in the provisions of the treaty. But only in special circumstances can a state enjoying permanent neutrality acquire new colonies at all, and never by force of arms; so that annexation, if it takes place, must be voluntary and undertaken with the consent of the colony, the neutralized state and the guarantors. When so acquired, provision would doubtless be made for the extension of the perpetual neutrality over the newly acquired territory. There is a conflict of opinion, however, with regard to the power of a neutralized state in any way to increase its territory. M. Fauchille interprets the provision in the Treaty of 1831, whereby the Powers agree to respect the neutrality of Belgium "within its limits" as expressing the objection, on their part, to consider a Belgium increased in territory, by whatever means, beyond the limits provided. On the other hand, M. Rivier has held that every sovereign state, whether neutralized or not, has the right of increasing its territory by acquisitions. "It is," he says, "a right essential to the right of development; to refuse it or to subject its exercise to the approval of other Powers is in reality to deny to it the right of self-preservation." He adds, however, that "the consent of the Powers, which have contributed toward creating the neutral position, is indispensable." In this latter opinion he is supported by M. Piccioni, in his *Neutralité Perpetuelle*, where he says: "A perpetually neutral state can not acquire colonies unless the guarantors agree to extend the same provisions to the colonies when annexed." In general, it may be held that a neutralized state may acquire colonies subject to the approval of the guarantors, provided always that the acquisition of territory does not render the state any the less capable of fulfilling the duties of permanent neutrality. To attempt more than this is to risk the continued recognition of its neutrality.

If the territory neutralized is at the time a part only of a larger

state, the application of permanent neutrality must effect to a certain extent a separation between the colony and the mother country. The emancipation of a colony, no less than its acquisition, affects its international position toward all the world, and creates at the same time new and special relations. But under permanent neutrality this separation is economic only, and not political. The sovereignty remains, and likewise the duties of protection and the privileges of internal control. Only in military matters is the tie loosened. The mother country may no longer, after the neutralization of the province, receive from it in time of war supplies of men or arms or goods included under the list of contraband, and this for the reason that, being freed from the undivided burden of defense, it may not in justice continue to use the resources of the colony in its wars.

We have seen, in the case of Savoy, that the mother country may maintain a garrison within the province in time of peace, and build fortifications there for its protection in case of war. A more specific duty is involved in the defense of harbors and coaling stations. Every neutral government is bound to prevent the occurrence of hostilities within its territory and territorial waters, and to restrict, generally to twenty-four hours, the time in which belligerent vessels may remain within its harbors. Coal may be supplied, even to belligerents, in such quantities as to enable them to reach the nearest port of their own territories or a nearer named port, and should the ships of hostiles meet in a neutral harbor one of them must be delayed until at least twenty-four hours after the departure of the other. For the observance of all these provisions, fortifications are advisable and necessary, and the mining, policing and efficient guarding of coaling stations and their adjacent shores becomes the first duty of every neutralized territory, whether a colony or an independent state.

On the other hand, the advantages which accrue both to the colony and to the mother country from neutralization are obvious and far-reaching. Not only would burdens of defense, weighing formerly upon a state and colony alone, be greatly lessened under the guarantee of many nations, but also the fear of colonial losses and the consequent blow to national honor, the chief causes of competitive armaments to-day, be forever removed, and their place taken by a

friendly feeling of security. Under permanent neutrality the colony, no less than the mother state, would be permitted to exercise more freely in internal development and the furtherance of its most cherished purposes, the activities and resources formerly expended upon fruitless and burdensome protection against aggression and war.

TARIFF UNIONS

The points of greatest difficulty in the application of permanent neutrality in the future will most probably arise in determining the commercial relations between neutralized states or colonies and the rest of the world. Just as a neutral state is bound to exercise impartiality in all relations with belligerents, so the neutralized state or colony, in order to receive continued recognition of its position, must be no less prepared to act impartially toward its guarantors. If it becomes a nuisance, leaving to them nothing but burdens from which the corresponding interests have been removed, the immunity it enjoys will certainly not long endure. Permanent neutrality is a matter of mutual and continued self-interests, and must be fairly recognized as such if anything of lasting value is to be attained from its application.

There are two forms of tariff unions, those which merely conciliate the economic interests of states and those which wholly fuse them. The former are allowed to neutralized states, the latter are forbidden. There exists only one instance to the contrary, that of Luxembourg, which was allowed, under the Treaty of 1867, to remain within the customs union of the German States, of which it had formerly been a member. But Luxembourg is an exceedingly small state, the economic existence of which would be extinguished if it were left without some freedom of commercial relations with at least one of the states by which it is surrounded. Were its markets larger and more important, and were it capable either agriculturally or industrially of independent existence, this intimate relationship would never have been allowed, and Luxembourg would have been compelled to stand, or fall, upon its own economic self-sufficiency. As it is, her position furnishes an exception to the otherwise universal rule. Mere commercial treaties, however, not

exclusive in character, may be with reason allowed to a neutralized state. Wheaton remarks that the perpetually neutral state must vigilantly guard against accepting obligations incompatible with its duties in time of war, but he adds that the right of erecting commercial barriers can not be considered inconsistent with neutrality, unless expressly forbidden by treaty. Article 4 of the Treaty of the 14th of November, 1863, provides that

The Union of the Ionian Islands to the Hellenic Kingdom shall not involve any change as to the advantages conceded to foreign Commerce and Navigation in virtue of Treaties and Conventions concluded by Foreign Powers with the Government of Her Britannic Majesty, in her character of Protector of the United States of the Ionian Islands.

Commercial treaties have been condemned because they compromise the political independence of the neutralized state, and tend sooner or later to result in its more intimate union with the favored nations. The weight of evidence, however, is on the other side, and, in fact, a treaty leading to the *suppression* of a line of customs on the Belgian frontier was, as Westlake has shown, objected to by the Powers as itself indicating a tendency toward political absorption. Although treaties of commercial intercourse doubtless contribute in influencing the general direction of a foreign policy, such influences are legitimate and mark the strength rather than the weakness of the state concerned. Restrictions upon such treaties go far toward establishing a mere protectorate; and in the power of a state to alter its commercial relations with its neighbors and to direct its policy to its own national development, amid the movements of the peoples which surround it, lies the best assurance of its independence from foreign control.

APPLICATION IN THE FUTURE.

Permanent neutrality has developed out of a privilege, applied to single states, into a power available to the peace-loving, colony-holding nations of to-day. It can no longer be misjudged as a restriction upon free development. It has been seen that neutralized states may erect fortresses in their own defense, that they may enter into alliances except those for purposes of offensive war, that they may direct

their internal affairs exclusive of foreign control, that they may acquire colonies, and finally that they may conclude treaties for commerce and friendly trade.

Thus equipped with favors, permanent neutrality is starting upon the second century of its existence. It no longer justifies the bitter words of Kleen, "the moving impulse has oftenest been only a compromise between selfish and opposite interests." The period of the neutralization of buffer states is past, and the period for removing the jealous relationships between Europe and America and the Far East has begun. Neutralization is the remedy lying ready to our hands for removing not only the causes of war, but also the intolerable burdens of armed peace. There is no loss of honor to a state in accepting neutralization and no occasion for shame in granting it to colonial possessions. Free and independent states may ask for and receive permanent neutrality as freely as did Switzerland a century ago and every state may have the opportunity of expressing its desire before one of the many international conferences summoned in the furtherance of peace. The part which may be played by the United States in the future of permanent neutrality has been treated in a previous article,¹ but its mighty possibilities are not restricted to our nation alone. South America in particular may propose it for one or all of her states, and by union in this respect maintain before the world any principle of permanent neutrality to which she wholly gave her support. Not only would her growing nations be freed from the crippling burdens of competitive militarism, but also, once prejudices and the fear of aggression removed, a way would be opened to a friendly and far more stable relationship toward all the world which could not fail to meet with the approval of the Powers. This result in the furtherance of national development and international peace would be inestimable; it is also possible.

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¹ "The United States and Neutralization," in the *Atlantic Monthly* for September, 1910.